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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

14 | CANDY MILLER, an individual,

15 Plaintiff,

16 | VS.

17 MERCK SHARP & DOHME CORP., a
New Jersey Corporation; MERCK &
18 CO., INC., a New Jersey Corporation;
and DOES 1 through 100, inclusive.

Defendants.

| Case No. 2:22-cv-00309-RFB-BNW

**STIPULATED DISCOVERY PLAN
AND STAY PENDING DECISION
ON MOTION TO DISMISS**

SPECIAL SCHEDULING REVIEW REQUESTED

Pursuant to Fed. R. Civ. P. 26(f) and LR 26-1(a), Plaintiff Candy Miller and Defendants Merck & Co., Inc. and Merck Sharp & Dome Corp. (“Merck”) submit the following Stipulated Discovery Plan and Proposed Scheduling Order.

1 **I. MEETING**

2 The parties' counsel held a telephonic Fed. R. Civ. P. 26(f) conference
 3 on April 25, 2022.

4 **II. AGREEMENT TO STAY DISCOVERY PENDING DECISION ON
 MOTION TO DISMISS**

5 Merck has filed a motion to dismiss all claims in this case on the basis
 6 of, among other things, statute of limitations. ECF No. 14. The motion is fully
 7 briefed and awaiting decision. The parties stipulate that the commencement of
 8 discovery should be stayed until this motion to dismiss is decided because, if
 9 granted, it will resolve all claims in this case. The parties agree Fed. R. Civ. P. 1's
 10 goal of a "just, speedy, and inexpensive determination of every action and
 11 proceeding" are best met by this temporary stay to conserve judicial and party
 12 resources.

13 **III. DISCOVERY PLAN IF MOTION TO DISMISS IS DENIED**

14 The parties jointly propose the following discovery plan to govern in
 15 the event that Merck's motion to stay is denied:

16 **A. Initial Disclosures.**

17 The parties propose to make their Fed. R. Civ. P. 26(a)(1) initial
 18 disclosures within 30 days after a decision on the motion to dismiss is decided.

19 **B. Discovery Cut-Off Date.**

20 The parties propose that the discovery period run for 12 months from
 21 the decision on Merck's motion to dismiss. This exceeds the 180-day presumptive
 22 outside limit provided by LR 26-1(b)(1) for completing discovery for the reasons
 23 explained in Section IV below.

1 **C. Amending the Pleadings and Adding Parties.**

2 The parties shall file any motions to amend the pleadings or to add
 3 parties no later than 90 days before the discovery cut-off.

4 **D. Fed. R. Civ. P. 26(a) Disclosures (Experts).**

5 The parties propose that Fed. R. Civ. P. 26(a)(2) disclosures of experts
 6 and expert reports proceed, as it is permitted to proceed on order of the Court by
 7 LR 26-1(b)(3), as follows:

- 8 1. Plaintiff shall disclose experts and expert reports 150 days
 before the discovery cut-off;
- 9 2. Merck shall disclose experts and expert reports 120 days before
 the discovery cut-off;
- 10 3. The parties shall have until 90 days before the discovery cut-off
 to complete any depositions of any initial experts;
- 11 4. All parties shall disclose rebuttal experts and their reports 60
 days before the discovery cut-off; and
- 12 5. The parties shall have until the proposed discovery cut-off date
 to complete any depositions of rebuttal experts.

13 **E. Dispositive Motions**

14 The parties shall have until 30 days after the discovery cut-off to file
 15 dispositive motions.

16 **F. Pretrial Disclosures/Order**

17 The pretrial disclosures and order shall be filed no later than 30 days
 18 after the discovery motion deadline unless a dispositive motion is filed.

19 **IV. JUSTIFICATION FOR LONGER DISCOVERY PERIOD**

20 The parties believe the Court should permit a longer period for
 21 discovery than provided in LR 26-1(b)(1) due to the nature of this case and the

1 medical issues involved. This, in turn, expands the scope of discovery that the
2 parties intend to seek. The parties anticipate that extensive medical and scientific
3 discovery will be needed because this action involves complex claims of product
4 liability involving an FDA-approved vaccine manufactured by Merck. Plaintiff
5 has alleged injuries requiring several periods of hospitalization and/or
6 rehabilitation. Discovery will require gathering numerous medical records
7 concerning her medical condition as well as alleged damages. This may
8 potentially involve large document productions, depositions of medical providers,
9 and experts in multiple disciplines (e.g., medical, regulatory, design, damages).

10 Furthermore, collection of medical records frequently leads to the
11 identification of additional relevant medical providers whose records must be
12 obtained in subsequent requests. Each request, from sending the subpoena to
13 actually receiving the records, is likely to take 30 days or longer. Merck will thus
14 need sufficient time to obtain, review, and analyze these records, and to take the
15 depositions of several witnesses, including plaintiff, her medical care providers,
16 and ultimately, plaintiff's expert witnesses, of which there may be several.
17 Plaintiff also anticipates the necessity of conducting discovery as to the product at
18 issue in the case, which will likely include document productions and depositions
19 of witnesses, including experts.

20 The parties submit that their proposed discovery plan is an efficient
21 and realistic schedule for completing the significant amount of discovery
22 contemplated in this case.

23

24

1 **V. OTHER ISSUES**

2 **A. Protective Order.**

3 The parties intend to seek a protective order under Fed. R. Civ. P
4 26(c) to facilitate document production and disclosure, while protecting the parties'
5 respective interests in their confidential information. The parties will submit a
6 proposed protective order in a separate filing.

7 **B. Alternative Dispute Resolution.**

8 The parties have conferred about the possibility of using alternative
9 dispute resolution processes. The parties agree this issue is best addressed after
10 some discovery has taken place.

11 **C. Alternative Forms of Case Disposition.**

12 The parties have considered trial by magistrate judge and the use of
13 the short trial program. The parties do not consent to either at this time.

14 **D. Electronic Evidence.**

15 The parties have considered the possibility of presenting evidence to
16 the jury in electronic format. In the event that any electronic evidence is submitted
17 by either party, the parties understand that such evidence must be submitted in a
18 format that is compatible with the Court's electronic jury evidence display system.
19 The parties will consult the Court's website or contact the courtroom administrator
20 for instructions about how to prepare evidence in a format that meets these
21 requirements.

1 **E. Court Conference.**

2 The parties do not request a conference with the Court before entry of
3 the scheduling order.

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14 & Dohme Corp. and Merck & Co., Inc.

15 **ORDER**

16 IT IS ORDERED that ECF No. 18 is GRANTED in part and
17 DENIED in part. It is granted to the extent that discovery will
18 be stayed pending a decision on ECF No. 14. It is denied
19 without prejudice in all other regards. IT IS FURTHER
20 ORDERED that the parties must file a proposed Discovery
21 Plan and Scheduling Order within 14 days after ECF No. 14
22 is decided.

23 **IT IS SO ORDERED**

24 **DATED:** 5:15 pm, April 28, 2022



BRENDA WEKSLER
UNITED STATES MAGISTRATE JUDGE